
TITLE 327 WATER POLLUTION CONTROL BOARD**SECOND NOTICE OF COMMENT PERIOD**

LSA Document #10-403

DEVELOPMENT OF RULE AMENDMENT CONCERNING GENERAL CONSTRUCTION PERMIT FOR WATER MAINS**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language concerning the eligibility of a water main project funded by the drinking water state revolving fund (SRF) to receive a general construction permit. By this notice, IDEM is soliciting public comment on the draft rule language. IDEM seeks comment on the affected citations listed and any other provisions of Title 327 that may be affected by this rulemaking.

HISTORY

First Notice of Comment Period: June 30, 2010, Indiana Register (DIN: [20100630-IR-327100403FNA](#)).

CITATIONS AFFECTED: [327 IAC 8-3.5-3](#).

AUTHORITY: [IC 13-14-9](#); [IC 13-18-3](#).

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING**Basic Purpose and Background**

This rulemaking will repeal [327 IAC 8-3.5-3\(c\)](#), the prohibition against a water main project funded in whole or in part through the state revolving fund from being eligible to receive a general construction permit. This prohibition was included in [327 IAC 8-3.5](#) since its origination in 1999, but it has since been determined by IDEM that the prohibition is not necessary because a general construction permit is considered to be satisfactory for a water main project that is funded through the state revolving fund. All other requirements of [327 IAC 8-3.5-3](#) remain unchanged.

[IC 13-14-9-4](#) Identification of Restrictions and Requirements Not Imposed under Federal Law

The following element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is "not imposed under federal law" (NIFL):

[327 IAC 8-3.5-3](#) is a state rule, none of which stems from federal law. This rule action eliminates the prohibition against a water main project funded by SRF from being eligible to apply for a general construction permit. Other than [327 IAC 8-3.5-3\(c\)](#), which is being eliminated, the remainder of the rule is unchanged, and, as existing rule language, does not need to be considered under the NIFL requirement.

Potential Fiscal Impact

[IC 13-14-9-4](#) requires the inclusion of the estimated fiscal impact and expected benefits of all elements of a draft rule that are more stringent than a restriction or requirement imposed under federal law or apply in a subject area in which federal law does not impose a restriction or requirement ([IC 13-14-9-4\(a\)\(6\)](#)).

Water main extension projects reviewed for funding by the SRF have ranged in cost from \$100,000 to \$100,000,000. Deleting the prohibition against a water main project funded in whole or in part through the SRF from being eligible to receive a general construction permit will cause no fiscal impact though it should lessen the work required of an applicant to fill out the state application form. The fee schedule under the general construction permit notice of intent (NOI) application for a water main extension project is based on the amount of linear feet of water main to be constructed and has the same costs per length as under the individual construction permit. However, the NOI for a general construction permit for a water main extension is a two page form (state form 49008), and it is specific to water main extension projects. The individual construction permit application form (state form 35058) for a public water system is an 11 page form that contains portions applicable to well construction, pumping facility construction, storage facility construction, chemical addition, and water treatment facility construction in addition to the portion used for the water main extension application. The fee schedule under both the general and individual construction permits is as follows:

No fee for water main extensions under 2,500 linear feet.

\$150 for water main extensions from 2,501 to 5,000 linear feet.

\$250 for water main extensions from 5,001 to 10,000 linear feet.

\$500 for water main extensions greater than 10,000 linear feet.

Public Participation and Workgroup Information

No workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact MaryAnn Stevens in the Office of Legal Counsel, Rules Development Branch at (317) 232-8635 or (800) 451-6027 (in Indiana). Please provide your name, phone number, and e-mail address,

if applicable, where you can be contacted.

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from June 30, 2010, through July 30, 2010, regarding alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received no comments in response to the first notice of public comment period.

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Mailed comments should be addressed to:

LSA Document #10-403 (SRF eligible permit)
MaryAnn Stevens
Rules Development Branch
Office of Legal Counsel
Indiana Department of Environmental Management
100 North Senate Ave.
MC 65-41
Indianapolis, Indiana 46204-2251.

Hand delivered comments will be accepted by the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Room N1301, Indianapolis, Indiana. Comments also may be submitted by facsimile to (317) 233-5970. Please confirm the timely receipt of faxed comments by calling the Rules Development Branch at (317) 233-8970. Please note it is not necessary to follow a faxed comment letter with a copy of the letter submitted through the postal system.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by October 1, 2010.

Additional information regarding this rulemaking action may be obtained from MaryAnn Stevens, Rules Development Branch, Office of Legal Counsel, IDEM, (317) 232-8635 or (800) 451-6027 (in Indiana). Technical information about the SRF program can be obtained from William Harkins, Technical Review Coordinator, Indiana Finance Authority, (317) 234-4862 or (800) 451-6027.

DRAFT RULE

SECTION 1. [327 IAC 8-3.5-3](#) IS AMENDED TO READ AS FOLLOWS:

[327 IAC 8-3.5-3](#) Eligibility and exclusions for eligibility

Authority: [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-15-2](#); [IC 13-18](#)

Affected: [IC 13-11-2](#); [IC 13-18](#)

Sec. 3. (a) A responsible person as defined by section 6 of this rule is eligible for a general construction permit.

(b) A responsible person, responsible person's engineer, responsible person's developer, or the proposed public water system that has been issued a general construction permit program ban by the commissioner in accordance with section 8 of this rule is not eligible for a general construction permit.

~~(c) Proposed water main projects funded in entirety or in part by the Drinking Water State Revolving Fund are not eligible for a general construction permit.~~

~~(d)~~ **(c)** Proposed water main projects to a public water system under a connection ban in accordance with [327 IAC 8-3-4.2](#) are not eligible for a general construction permit.

~~(e)~~ **(d)** Proposed water main projects that meet any of the following criteria are not eligible for a general construction permit as defined by this rule:

- (1) The corresponding public water system has a two (2) year average peak that is between ninety percent (90%) and one hundred percent (100%) of the public water system's daily capacity, and the product of the following is equal to or exceeds two percent (2%) of the public water system's daily capacity:

- (A) The average daily customer demand of the proposed water main.
- (B) The peaking factor of the proposed water main.
- (2) The corresponding public water system's two (2) year average peak is equal to or less than ninety percent (90%) of the public water system's daily capacity and the sum of corresponding public water system's two (2) year average peak, and the product of the following is equal to or exceeds ninety-two percent (92%) of the public water system's daily capacity:
 - (A) The average daily customer demand of the proposed water main.
 - (B) The peaking factor of the proposed water main.
- (3) The sum of corresponding public water system's two (2) year average peak and the product of the following is equal to or exceeds one hundred percent (100%) of the public water system's daily capacity:
 - (A) The average daily customer demand of the proposed water main.
 - (B) The peaking factor of the proposed water main.

(f) **(e)** Proposed projects that meet the definition of a transmission main as defined by section 1 of this rule are not eligible for a general construction permit.

~~(g)~~ **(f)** An individual construction permit issued under [327 IAC 8-3](#) is required for all other water main extension construction meeting the criteria of [327 IAC 8-3-2\(a\)](#) that is not eligible for a general construction permit in accordance with this section or does not meet the general construction permit conditions listed in section 5 of this rule.

(Water Pollution Control Board; [327 IAC 8-3.5-3](#); filed Mar 31, 1999, 10:20 a.m.: 22 IR 2522; errata filed Aug 17, 1999, 3:15 p.m.: 23 IR 25; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; readopted filed Nov 21, 2007, 1:16 p.m.: [20071219-IR-327070553BFA](#))

[Notice of Public Hearing](#)

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